

## **REMARKS**

### **1. Claim status**

Claims 1-4, 8-9, 15-18, 21-22, 26-30, 35-37 and 42-47 are pending. Claims 1-4, 8-9, 15-18, 21-22, 26-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. All claims were rejected as anticipated by a single reference or obvious in view of one or more references. Claims 1-4 and 15-18 were rejected under 35 USC § 102(e) as being anticipated by U.S. Patent 6,825,046 issued to Forsyth (hereinafter "*Forsyth*"). Claims 26-27, 29-30, 35, 45, and 47 were rejected under 35 USC § 103(a) as being unpatentable over *Forsyth*. Claims 8-9, 15, 21-22, 28, 36-37, 42-43 and 46 were rejected under 35 USC §103(a) as being unpatentable over *Forsyth* in view of U.S. Patent Publication 2002-01788797 for Pawliszyn (hereinafter "*Pawliszyn*").

### **2. Claim amendments**

Claims 1, 4, 8, 15, 16, 18, 21, and 26 have been amended to remove the prior amendment providing the cap or cover member had no orifices therethrough, rejected by the Examiner as introducing new matter.

Claim 15 was amended to remove the period after desiccant in favor of the proper semicolon.

### **3. 112 Rejection and 132(a) objection.**

The Examiner rejected claims 1-4, 8-9, 15-18, 21-22, 26-28 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, namely a lack of support for the negative limitation to the "cap having no orifices therethrough." The Examiner further objected under 35 U.S.C. 132(a) to the amendment filed August 19, 2009 as introducing

new matter into the disclosure, specifically the limitation to the cap having no orifices therethrough is not supported. Those amendments to the claims adding such limited are explicitly cancelled by removal of that text made the subject of the rejection and objection.

**4. The rejection of claims 1-4 and 15-18 under 35 USC § 102(e) as being anticipated by Forsyth should be withdrawn.**

The rejection of independent claims 1, 15 and 16, and dependent claims 2-4 and 18, under 35 U.S.C. § 102(e) as being anticipated by *Forsyth* should be withdrawn as *Forsyth* does not disclose the limitation of the sorptive coating being applied to the cap's top cover interior surface. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The Examiner based the rejection on the position that "Forsyth teaches a vessel 6 with neck and opening capped by cap 3A, 4A having porous sorbent coated surface 1A." Office Action mailed June 23, 2009, p. 3, lines 18-19. However, independent claims 1, 15, and 16, as amended, make clear that the sorptive coating is applied directly on the top cover interior surface, an element not found in *Forsyth*, which instead includes a limitation of the sorptive coating applied to a cylindrical support 1A of an assembly 1, which is not part of the top cover interior surface and which instead is mounted through cover 4.

Claims 1-4 and 15 include the limitation of "said cap having a top cover interior surface in communication with said chamber and facing said chamber; and said top cover interior surface having a sorptive coating applied thereon." Claims 16-18 include the limitation of "a sorptive coating applied to said cover member."

*Forsyth* does not disclose a sorptive coating applied to the top cover interior surface of the cap or the cover member. Rather, *Forsyth* discloses a coating 2 on a cylindrical support 1A mounted through a silicone septum:

Referring to FIGS. 1 and 2, in detail, an assembly 1 for carrying out solid phase micro extraction is shown, comprising a cylindrical support 1A, which may be in the form of a fibre, and which may have a length of coating 2 of which various types of organic compounds could be used. The diameter of the fibre may vary, but would generally be between 0.5 to 2 mm and it may be solid or hollow.

As seen in FIG. 3, a cylindrical support 1A which has a length of coating, is mounted through a Teflon® faced silicone septum 4. Stainless steel tubing 3, which acts as a shield, of slightly longer length than the coating is mounted over the support 1A. If the fibre is pulled up through the silicone septum, until the fibre coating is inside the stainless steel sleeve 3, the extracted analytes are shielded from volatilizing into the atmosphere.

*Forsyth*, Col. 3, lines 12-27. *Forsyth* thus does not include the limitation of the sorptive coating applied to the top cover interior surface or the cover member, but instead explicitly teaches a completely different location for the sorptive coating - on a cylindrical support 1A mounted through the top cover or cover member. As the limitation of a sorptive coating applied to the top cover interior surface of the cap or the cover member is not found in *Forsyth*, claims 1-4 and 15-18 are not anticipated.

**5. The rejection of claims 26-27, 29-30, 35, 45, and 47 under 35 USC § 103(a) as being unpatentable over *Forsyth* should be withdrawn.**

The rejection of claims 26-27, 29-30, 35, 45, and 47 under 35 U.S.C. § 103(a) as being unpatentable by *Forsyth* should be withdrawn as *Forsyth* does not disclose the limitation of the top cover interior surface, or cover, having a sorptive coating applied thereon. The Examiner rejected independent claims 26, 29 and 45, taking the position that *Forsyth* disclosed all elements of the claims except the use of a cap having a sidewall within the neck of the vessel, or recapping the first vessel and capping the second. However, as established above in Section 4, *Forsyth*

explicitly teaches a completely different location for the sorptive coating - on a cylindrical support 1A mounted through the top cover or cover member and teaches away from a cap having a top cover interior surface in communication with, and facing, the chamber where the sorptive coating is applied to the interior surface of the top cover or to the cover itself. Thus, *Forsyth* does not teach all limitations of claims 26-27, 29-30, 35, 45, and 47.

**6. The rejection of claims 8-9, 15, 21-22, 28, 36-37, 42-44 and 46 under 35 USC §103(a) as being unpatentable over *Forsyth* in view of *Pawliszyn* should be withdrawn.**

The rejection of claims 8-9, 15, 21-22, 28, 36-37, 42-44 and 46 under 35 U.S.C. § 103(a) as being unpatentable by *Forsyth* in view of *Pawliszyn* should be withdrawn as *Forsyth* does not disclose the limitation of the top cover interior surface, or cover, having a sorptive coating applied thereon. The Examiner proposed to modify *Forsyth* to include the use of a particulate coating rather than a sorptive coating. As identified above in Section 4, this modification of *Forsyth* does not render the claims obvious as *Forsyth* teaches teaches a completely different location for the sorptive coating - on a cylindrical support 1A mounted through the top cover or cover member and therefore not on the top cover or cover member.

**7. Conclusion**

In light of the foregoing, the pending claims are patentable over the cited art as the art and proposed combinations each lack an element of the pending claims. Applicant requests the issuance of a notice of allowability.